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Office-Supreme Court, U.S.
FILED

In the

EDWARD [illegible],

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [illegible] CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 618

EDWARD R. GODFREY and GEORGIA G. GODFREY,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a retired corporate executive, incurred substantial losses during 1955, 1956, and 1957 in raising and selling beef cattle on a farm that was also his residence. The Tax Court disallowed petitioner's claimed deductions for the losses, finding that "petitioner's primary purpose in buying and developing the farm as a whole, was not to establish a business with which to augment his already large income, but rather to gratify his desire to establish a

substantial country estate" (R. 47a). The court of appeals, upholding the finding as not clearly erroneous, affirmed. That holding, dispositive of the case, presents only a question of fact not warranting review by this Court.

The petition is directed primarily to a further comment of the Tax Court suggesting that, even if petitioner had been motivated primarily by the prospect of ultimately reaping a profit, the expenditures during the years in question would nevertheless be nondeductible as expenses incurred in "preparing" to enter, rather than "in carrying on," a business. If a holding at all, the comment was at most an alternative ground for decision. The court of appeals did not rely on that ground, and its affirmance of the primary ground for the decision—the lack of a business motive—is dispositive of the case. The question argued by petitioner is therefore not presented.

The petition for certiorari should be denied. Respectfully submitted,

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NOVEMBER 1964.

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